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## Appeal Decision

Site visits made on 10 December 2019 by Ifeanyi Chukwujekwu BSc MSc MIEMA  
CEnv AssocRTPI

### Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6<sup>th</sup> March 2020

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#### All Appeals

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Maximus Networks Ltd against the decision of Council of the London Borough of Camden.
- The development proposed is a public call box.

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#### Appeal A Ref: APP/X5210/W/19/3231467

##### Public Highway, 55 Fortune Green Road, London, NW6 1DR

- The application Ref 2018/5533/P, dated 6 November 2018, was refused by notice dated 20 December 2018.

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#### Appeal B Ref: APP/X5210/W/19/3231449

##### Public Highway, Finchley Road opposite cinema, London, NW6 4RS

- The application Ref 2018/5538/P, dated 6 November 2018, was refused by notice dated 20 December 2018.

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#### Appeal C Ref: APP/X5210/W/19/3231474

##### Public Highway, Adelaide Road corner Finchley Road, London, NW8 6NN

- The application Ref 2018/5558/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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#### Decisions – Appeals A to C

1. All appeals are dismissed.

#### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

#### Preliminary and Procedural Matters

3. The postcodes given in the application forms for Appeals B and C are different from those in the banner header, which were taken from the appeal forms and decision notices. These postcodes were found to be more accurate to the locations of the proposed public call boxes.
4. The cases before me relate to three separate proposals for public call box pursuant to Part 16, Class A of the GPDO<sup>1</sup> which refers to development '*...by or on behalf of*

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

*an electronic communications code operator for the purpose of the operator's electronic communications network...'. Whilst each appeal relates to a different site, the proposed public call boxes on the sites are identical. Each proposal has been considered on its individual merits, but as they raise similar issues, the cases are dealt with in a single decision letter.*

5. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO. This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, transitional and saving provisions at Part 5 of the 2019 Regulations provide that where an appeal has been made within 6 months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the three appeals being considered.
6. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed public call box under the GPDO, subject to prior approval by the local planning authority of siting and appearance.
7. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. The Council determined that prior approval was required and refused. The determination of these appeals has been made on the same basis.
8. A recent judgement (the 'Westminster judgement')<sup>2</sup> considered the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of the GPDO. This judgement confirmed 'that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development 'for the purpose' of the operator's network precisely because it is for something else as well. In that case the proposed public call box was for a dual purpose of advertisement display and telecommunications use and therefore contained features that were for advertising and 'not at all there for the telecommunications function'. The appeals being considered were refused by the Council on grounds relating to siting and appearance. However, the Westminster judgement confirmed that '*the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered*'<sup>3</sup>.
9. The Council's decisions on the applications were reached prior to the Westminster judgement. The appeals were submitted after the judgement. However, both parties have been given the opportunity to address the relevance of this judgement upon the appeals being considered. The Council refer directly to the Westminster judgement in their Statement of Case for each appeal and suggest that the

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<sup>2</sup> Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin) 5 February 2019.

<sup>3</sup> Paragraph 46.

proposals are not solely for the purpose of the operator's electronic communications network. The appellant has responded to the contrary.

10. The proposed call boxes would comprise two sides and consist of steel with a roof-mounted solar panel. They would have a footprint of approximately 1.33 metres by 0.98 m, and they would be 3.12 m high. The call boxes would have a phone pocket on one side and a non-illuminated display panel on the other. LED lighting strips would be located on the outside edges of the call box. The submitted details indicate that the overall colour of the kiosk is customisable, but would typically be gun metal grey or black, and would have a sheen through the integral use of toughened glass and photovoltaic glass in the structure.
11. In this regard, the focus as to the potential for a possible dual use including advertising is the non-illuminated display panel which is the same size as a 6-sheet advertisement on the rear face of the call box. The submitted Opinion of Counsel regarding this matter and the technical description of the proposed call boxes provided have been taken into account. The display panel is not illuminated and is integral to the telecommunications functions of the apparatus. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a public call box. There is no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising. Consequently, on the basis of the evidence provided in these appeals, it is considered that the proposals are solely the purpose of the operator's electronic communications network and accordingly would fall within the permitted development rights regime under the provisions of Schedule 2, Part 16, Class A of the GPDO. In all three of these appeals therefore, only the construction of the call boxes is under consideration and not a potential dual purpose for advertisements. As the principle of development is established, considerations such as need for the call boxes are not relevant matters.

### *Planning Policy*

12. In the reasons for refusal pursuant to Appeals A to C, the Council cite Policies D1, D2, G1, A1, C6 and T1 of the London Borough of Camden Local Plan, (LP) (2017), and the National Planning Policy Framework (Framework). The appellant has referred to technical guidance contained within the Pedestrian Comfort Guidance produced by Transport for London (TfL) and the TfL Streetscape Guidance 2017. The principle of development is established by the GPDO and prior approval includes no requirement that regard be had to the development plan. The GPDO requires the local planning authority to assess the proposed development solely based on its siting and appearance, taking into account any representations received. Accordingly, the Appeals are not determined based on Section 38(6) of the Planning and Compulsory Purchase Act 2004. Nonetheless, regard has been given to these policies, related guidance and the Framework only in so far as they are considered relevant to matters of siting and appearance, designated heritage assets and the safe and efficient operation of the highway.

### *Crime and antisocial behaviour*

13. The Council included a refusal reason relating to community safety and security. The appellant contends that concerns relating to the potential for crime and anti-social behaviour are not matters that can be considered under the scope of the prior approval process. Reference has been made to an appeal decision from 2013<sup>4</sup>

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<sup>4</sup> APP/X5990/A/12/2187244

in which the Inspector stated that the potential for anti-social behaviour was not relevant to the appeal in question. That decision is of some vintage. Whilst the reasoning suggested that the matter was not relevant to the case in question it does not follow that a conclusion in a single case has wider application.

14. Having regard to the Murrell judgement<sup>5</sup> any decision must be confined to matters of siting and appearance. Those matters are quite broad in scope and the judgement does not dictate precisely what kind of detailed considerations will be relevant when considering the issues. In principle I am satisfied that matters of crime and disorder could be relevant to the matter of 'siting' if evidence was presented to indicate that a specific proposal would have implications in that regard, on account of its location. Clearly, whether there is evidence to that effect will require a judgement on any given case and I have considered that matter in the main issues below.

#### *Wheelchair accessibility*

15. The Council included a reason for refusal relating to wheelchair accessibility. However, the provisions of the GPDO require the decision-maker to assess the proposed development solely on the basis of its siting and appearance. As this matter relates to the design of the proposals and does not fall within the specific scope of these issues relating to prior approval, I cannot take account of it as having a direct bearing on the outcome of these appeals.

### **Main Issues**

16. The main issues in relation to all three appeals are the effect of the siting and appearance of the proposed call box on (1) the character and appearance of the street scene within which the development would be sited and; (2) pedestrian and highway safety and convenience and crime and disorder.

### **Reasons for the Recommendation**

#### **Appeal A**

##### *Character and appearance*

17. The proposed call box would be located on a pavement stretch of Fortune Green Road. The pavement is characterised by slender street furniture which consists of a lamp column and a cycle parking stand arranged parallel to the kerb. There are no bulky items of street furniture in the direct vicinity of the site. The call box would be significantly wider than other items of street furniture including existing telephone kiosks in the general vicinity of the site. It would also be located approximately at the centre of the pavement. Given the relatively open nature of this part of the street, the presence of the call box would be quite noticeable to pedestrians and road users. Consequently, the proposed call box would appear as a prominent and intrusive feature that would be at odds with the prevailing open character of this part of the street. Also, there are at least two other call boxes already sited within the general vicinity of the site, located upon the public pavement south of the appeal site, near Fortune Green. The introduction of this new call box would give the impression of adding harmful clutter to the area that would downgrade the quality of the public realm.

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<sup>5</sup> Murrell v SSCLG [2010] EWCA Civ 1367

18. The siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the street scene. Consequently, it would be at odds with the prevailing open character of this part of the street.

*Pedestrian and highway safety and convenience*

19. The proposed call box would be installed within the pavement area which fronts commercial and leisure properties featured at this part of Forest Green Road, such as The Gym and Tesco Express. As noticed at the time of the site visit, there is considerable pedestrian traffic on the pavement generated by passers-by, people accessing and leaving these properties or employees of businesses within these properties taking breaks standing on the pavement. The installation of the call box would, based on its size be significantly wider than the existing street furniture zone and would therefore protrude significantly in to the existing pedestrian path. This would represent a significant physical and visual obstruction to pedestrians.
20. It would also be located very close to the vehicular access adjacent to 55 Fortune Green Road which provides the entry and egress to and from the parking court associated with the ground floor units and flats within the block. The position of the sign would also obstruct visibility splays at the vehicular access which could lead to dangerous situations with cyclists and pedestrians being placed at risk. This would have a negative impact on pedestrian safety and convenience. Accordingly, the flow of pedestrian traffic would, therefore, be restricted around this area and would be detrimental to highway safety.

*Crime and Disorder*

21. The comments made by the Police as regards the potential for anti-social behaviour appear to be generic in nature and are not related to the particular individual siting of the proposals. As set out above, the principle of kiosks is established through the GPDO, subject to the prior approval regime. Consequently, I am not satisfied that approval can be withheld based on general concerns about the kind of development proposed. There is no specific evidence or reason to consider that the presence of the kiosk would encourage crime or anti-social behaviour on account of its specific siting, especially taking into account that the design of the proposal is not fully enclosed. The decisions referred to by the Council<sup>6</sup> concern Max 1 telephone kiosk, which are of a different design. There is natural surveillance of the site, including the flow of pedestrians. Additionally, policy and legislative options are available to tackle criminal and anti-social behaviour, and therefore limited weight has been given to these arguments.

*Recommendation and Conclusion*

22. For the above reasons, based on the evidence before me and all other matters raised, I recommend that the appeal should be dismissed.

**Appeal B**

*Character and appearance*

23. The proposed call box would be located on a pavement stretch on the west side of Finchley Road. The pavement is characterised by a slender street furniture which consists of slender lamp columns, signposts and a CCTV post on the kerb. There are no bulky items of street furniture in the direct vicinity of the site. The call box

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<sup>6</sup> APP/X5210/W/18/3195370, APP/X5210/W/18/3195368, APP/X5210/W/17/3180691, APP/X5210/W/18/3195366

would be significantly wider than other items of street furniture in the general vicinity of the site. Given the relatively open nature of this part of the street, the presence of the call box would be quite noticeable to pedestrians and road users. Consequently, the proposed call box would appear as a prominent and intrusive feature that would be at odds with the prevailing open character of this part of the street. The introduction of this new call box would give the impression of adding harmful clutter to the area that would downgrade the quality of the public realm.

24. The siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the street scene. Consequently, it would be at odds with the prevailing open character of this part of the street. The proposal would not meet with Policy D1 of the LP.

#### *Pedestrian safety and convenience*

25. The proposed call box would be installed within the pavement area of the road. It would also be located in an area which attracts pedestrian traffic as there is a cinema opposite, and Swiss Cottage underground station about 100 metres up the road. As noticed at the time of the site visit, there is considerable pedestrian traffic on the pavement generated by passers-by, people accessing and leaving these properties or employees of businesses within this area taking breaks standing on the pavement. It also appeared to be a popular jogging route at the time of my visit. The installation of the call box would, based on its size and siting reduce the available clear footway below an acceptable level<sup>7</sup>. Also, the call box would be significantly wider than the existing street furniture zone and would therefore protrude significantly into the existing pedestrian path. This would represent a significant physical and visual obstruction to pedestrians.
26. It would also be located very close to the vehicular access leading to the rear of 115 Finchley Road. It would also obstruct visibility splays at the vehicular access, and this could lead to dangerous situations with cyclists and pedestrians being placed at risk. This would have a negative impact on pedestrian safety and convenience. Accordingly, the flow of pedestrian traffic would, therefore, be restricted around this area and would be detrimental to highway safety. The proposal would not meet with Policies T1 and A1 of the LP.

#### *Crime and Disorder*

27. The comments made by the Police as regards the potential for anti-social behaviour appear to be generic in nature and are not related to the particular individual siting of the proposals. As set out above, the principle of kiosks is established through the GPDO, subject to the prior approval regime. Consequently, I am not satisfied that approval can be withheld based on general concerns about the kind of development proposed. There is no specific evidence or reason to consider that the presence of the kiosk would encourage crime or anti-social behaviour on account of its specific siting, especially taking into account that the design of the proposal is not fully enclosed. The decisions referred to by the Council<sup>8</sup> concern Max 1 telephone kiosk, which are of a different design. There is natural surveillance of the site, including the flow of pedestrians. Additionally, policy and legislative options are available to tackle criminal and anti-social behaviour, and therefore limited weight has been given to these arguments.

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<sup>7</sup> Pedestrian Comfort Level Guidance First Edition 2010 Appendix B: Recommended Widths Page 25

<sup>8</sup> APP/X5210/W/18/3195370, APP/X5210/W/18/3195368, APP/X5210/W/17/3180691, APP/X5210/W/18/3195366

### *Recommendation and conclusion*

28. For the above reasons, based on the evidence before me and all other matters raised, I recommend that the appeal should be dismissed.

## **Appeal C**

### *Character and appearance*

29. The proposed call box would be located on a pavement south side of Adelaide Road, where it corners into Finchley Road. The pavement is characterised by a slender street furniture which consists of slender lamp columns, signposts and traffic signal posts on the kerb. There are no bulky items of street furniture in the direct vicinity of the site. The call box would be significantly wider than other items of street furniture. It would also be located approximately at the centre of the pavement. Given the relatively open nature of this part of the street, the presence of the call box would be quite noticeable to pedestrians and road users. Consequently, the proposed call box would appear as a prominent and intrusive feature that would be at odds with the prevailing open character of this part of the street. The introduction of this new call box would give the impression of adding harmful clutter to the area that would downgrade the quality of the public realm.

30. The siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the street scene. Consequently, it would be at odds with the prevailing open character of this part of the street. The proposal would not meet with Policy D1 of the LP.

### *Pedestrian Safety*

31. The proposed call box would be installed within the pavement area of the road. As noticed at the time of the site visit, there is considerable pedestrian traffic on the pavement generated by passers-by, joggers and people accessing and leaving different properties along this road. The installation of the call box would, based on its size and siting be significantly wider than the existing street furniture zone and would therefore protrude significantly into the existing pedestrian path. This would represent a significant physical and visual obstruction to pedestrians. Accordingly, the flow of pedestrian traffic would, therefore, be at risk around this area and would be detrimental to highway safety. The proposal would not meet with Policies T1 and A1 of the LP.

### *Crime and Disorder*

32. The comments made by the Police as regards the potential for anti-social behaviour appear to be generic in nature and are not related to the particular individual siting of the proposals. As set out above, the principle of kiosks is established through the GPDO, subject to the prior approval regime. Consequently, I am not satisfied that approval can be withheld based on general concerns about the kind of development proposed. There is no specific evidence or reason to consider that the presence of the kiosk would encourage crime or anti-social behaviour on account of its specific siting, especially taking into account that the design of the proposal is not fully enclosed. The decisions referred to by the Council<sup>9</sup> concern Max 1 telephone kiosk, which are of a different design. There is natural surveillance of the site, including the flow of pedestrians. Additionally, policy and legislative options are available to

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<sup>9</sup> APP/X5210/W/18/3195370, APP/X5210/W/18/3195368, APP/X5210/W/17/3180691, APP/X5210/W/18/3195366

tackle criminal and anti-social behaviour, and therefore limited weight has been given to these arguments.

*Recommendation and conclusion*

33. For the above reasons, based on the evidence before me and all other matters raised, I recommend that the appeal should be dismissed.

**Overall Conclusions and Recommendations**

34. For the reasons set out above, I conclude that the installation of public call boxes on the pavements at all appeals would have an unacceptably harmful effect on the character and appearance and the proposals would harmfully affect the pedestrian environment. I recommend all Appeals should be dismissed.

*Ifeanyi Chukwujekwu*

APPEALS PLANNING OFFICER

**Inspector's Decision**

35. I have considered all the submitted evidence and the Appeal Planning Officer's report, and on that basis, I agree that all of the Appeals should be dismissed.

*Chris Preston*

INSPECTOR